

## **R E M A R K S**

With entry of the present amendment, Claims 1, 3-4, 8, 10, 14-19, 23-31, 33-34 and 38-45 are in the case. Claims 2, 5-7, 9, 11-13, 20-22, 32 and 35-37 were previously cancelled without prejudice or disclaimer. Claims 42-45 are new. A Request for Continued Examination is submitted herewith.

### **Amendment to the Claims:**

Claims 1 is amended to remove the limitation of cancelled claim 2 which had been previously presented. Support for this amendment can be found in the Specification as filed at least at paragraph [0042] and Claim 1 as originally filed.

Claim 8 is amended to remove the limitation of cancelled claim 9 which had been previously presented. Support for this amendment can be found in Claim 8 as originally filed.

Claim 14 and 23 are amended to remove the limitation related to mechanical transport which had been previously presented. Support for this amendment can be found in Claims 14 and 21 respectively as originally filed.

Claim 31 is amended to remove the limitation of cancelled claim 32 which had been previously presented. Support for this amendment can be found in the Specification as filed at least at paragraph [0042] and Claim 31 as originally filed.

Claims 3, 10, 33 are amended to present corrected dependencies in light of the current amendments.

New Claims 42, 43, and 45 are presented. New Claims 42-44 represent originally filed claims 2, 9, and 32, respectfully, which support presentation of these claims. New Claim 45 is added to claim the additional feature of a time range for a washing treatment of the invention. Support for new Claim 45 can be found in the Specification at least at paragraph [0020]. No additional fees are incurred by adding four (4) new claims, since the fees for sixty-six (66) total claims were originally paid and there are currently only 37 claims in the case.

No new matter is added by these amendments, and Applicant by no means intends to limit the scope of the subject claimed via this amendment.

### **Items of the Final Office Action:**

Item 1 - no response necessary, as it is a recitation of 35 U.S.C. §103(a).

Item 2 - Rejection of Claims 1, 3, 4, 8, 10, 14-19, 23-31, 33, 34, and 38-41 under 35 U.S.C. §103(a):

The above referenced claims stand rejected under 35 U.S.C. §103(a) as being unpatentable over Howarth (WO 03/001931) (“Howarth”) in view of Hilgren et al. (US 6,514,556) (“Hilgren”), and Yang et al. (US 6,123,870) (“Yang”). Applicant respectfully traverses the rejection of these claims on the basis that the Examiner has failed to establish a *prima facie* case of obviousness.

The initial burden of proof standard applicable when making a determination of obviousness under section 103(a) was clearly stated in *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992), as follows:

In proceedings before the Patent and Trademark office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. . . . [The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.’ The patent applicant may then attack the Examiner’s *prima facie* determination as improperly made out, or the applicant may present objective evidence tending to support a conclusion of nonobviousness.

In deciding obviousness, one must look at the prior art from the vantage point in time prior to when the invention was made. Moreover, when combining prior art references to find obviousness, there must be something in the prior art as a whole which suggests the desirability, and therefore the obviousness, of making the claimed combination. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1432 (Fed. Cir. 1988). “The combination of elements from non-analogous sources, in a manner that reconstructs the applicant’s invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.” *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992).

Hilgren carefully explains why the particular antimicrobial agent chosen in the reference is peroxyacetic acid. See Hilgren, Column 2, lines 1-57. Hilgren specifically rejects an antimicrobial agent having “residual activity” which “implies the presence of a film of antimicrobial material which will continue to have antimicrobial effect which may require further rinsing of the food product.” See Hilgren, Column 2, lines 7-10. This clearly teaches away from the microbiocidal compositions of the present invention which have a bromine residual. See presently amended Claims 1 and 31 and claims that depend therefrom.

In addition, Hilgren discounts use of halogen compounds as antimicrobial agents, specifically those which are chlorinated. Hilgren asserts that such materials have a high use rate since they either are not effective at low concentrations or they tend to be rapidly consumed by the high organic load included with the poultry. See Hilgren at Column 2, lines 20-28. Furthermore, the antimicrobial agent chosen by Hilgren, peroxyacrylic acid, is so far removed from the microbiocidal composition of the present invention, “consisting

essentially of water having a bromine residual derived from a halogen stabilizer, a bromine source and an alkali metal base or alkaline earth metal base" as to be deemed hindsight reasoning, which is forbidden by the courts.

Therefore, one of ordinary skill in the art, upon reading the disclosure of Hilgren, taken as a whole, would not have been motivated to combine the reference's teaching of processes of reducing microbial contamination on poultry such as inside-outside bird washing with the teaching of Howarth's halogen species and/or Yang's bromine compounds.

Since there is no motivation to combine the references, the Office Action fails to present a *prima facie* case of obviousness and the rejection of the present claims should be withdrawn.

Regarding the applicability of Howarth as a reference which makes the present claims obvious in light of Hilgren, the Howarth reference does not teach the possibility, let alone the fact, that processing of poultry in a manner, such as the inside-outside bird washing of Hilgren, which has shortened contact times of the microbiocidal agent with the site of bacterial contamination, could be effective. Howarth teaches at paragraph [0050] that immersion of the birds in chill tank solutions for a period of 1.5 hours is what is desirable and necessary.

None of the cited references teach or suggest that shortened treatment contact times with the presently claimed microbiocidal compound, such as sulfamate stabilized bromine chloride (SSBC), would show good results. As stated in Eric W. Liimatta's Declaration under 37 CFU 1.132, submitted herewith, Dr. Liimatta conducted tests of SSBC against a known pathogen, *Campylobacter jejuni* at two different treatment contact times (30 seconds and 600 seconds), and at two different temperatures (4.4 °C and 20 °C).

Dr. Liimatta made the surprising observation that the percent reduction of bacteria at both temperatures for the shorter (30 seconds) treatment contact time of the microbiocidal composition, SSBC, showed surprisingly better efficacy (greater percent reduction of bacteria) than at a significantly longer treatment contact time (600 seconds). This surprising and unexpected result, which is a factor strongly negating obviousness, is born out by Dr. Liimatta's data. The data shows that, at 20 °C and a 30 seconds treatment contact time with SSBC, the percent bacteria reduction from control was 96.3% vs "no reduction" at 600 seconds. Likewise, at 4.4 °C the shortened, 30 seconds, treatment contact time produced an unexpectedly high result of 97.5% reduction of bacteria when compared to the 12.5% reduction demonstrated at the same temperature and a 600 seconds treatment contact time.

Clearly, the cited references, either singularly or in combination, are ineffective to destroy the patentability of the present Claims.

In view of all of the foregoing, favorable action on all of the Claims is solicited. If matters remain requiring further consideration that may be expedited by discussion, the Examiner is requested to telephone the undersigned at the number given below so that such matters may be discussed and, if possible, promptly resolved.

Please continue to address correspondence in this application to Mr. Spielman at the address of record.

Respectfully submitted,

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